

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RONALD ALLEN JOHNSON,

Petitioner,

v.

Case No. 10-CV-14347  
HON. GEORGE CARAM STEEH

THOMAS BIRKETT,

Respondent.

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AMENDED ORDER ACCEPTING REPORT AND RECOMMENDATION (#13),  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (#8),  
DISMISSING PLAINTIFF'S PETITION AND DENYING A CERTIFICATE OF  
APPEALABILITY

On October 18, 2011, petitioner filed this application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 6, 2011, respondent filed a motion for summary judgment, arguing that petitioner's habeas application is untimely. On September 8, 2011, Magistrate Judge Komives issued a twenty-two page report and recommendation that respondent's motion for summary judgment be granted and plaintiff's petition be dismissed as plaintiff's petition is untimely. The objection deadline has passed and no objections were filed. The court has reviewed the report and recommendation, and in the absence of timely objection,

The court hereby adopts Magistrate Judge Komives's September 8, 2011 report and recommendation, grants defendant's motion for summary judgment, and dismisses plaintiff's petition.

The court further concludes that the magistrate judge correctly found that petitioner is not entitled to a certificate of appealability. Before petitioner may appeal the court's decision denying his petition for a writ of habeas corpus, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3)(B); Fed. R. App. P. 22(b); In re Certificates of Appealability, 106 F. 3d 1306, 1307 (6th Cir. 1997). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard requires that petitioner "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). When a prisoner's petition is denied on procedural grounds, a certificate of appealability "should issue . . . if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 529 U.S. 473, 484 (2000).

Petitioner is not entitled to a certificate of appealability because jurists of reason would not find it debatable whether petitioner has stated a valid claim that his constitutional rights were violated, nor would jurists of reason find it debatable that this court's procedural ruling is correct. A certificate of appealability shall not issue.

SO ORDERED.

Dated: October 5, 2011

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record by electronic and/or ordinary mail and upon Ronald Johnson #276495, Michigan Reformatory, 1342 West Main Street, Ionia, Michigan 48846.

s/Josephine Chaffee  
Deputy Clerk